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**U.S. SMALL BUSINESS ADMINISTRATION**  
**WASHINGTON, D.C. 20416**

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**OFFICE OF CHIEF COUNSEL FOR ADVOCACY**

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

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**WASHINGTON, DC 20554**

**In the Matter of**

## Implementation of the Cable Television Consumer Protection and Competition Act of 1992

## Consumer Protection and Competition

**Act of 1992**

## Consumer Protection and Customer Service

## Service

**MM Docket No. 92-263**

**Comments of the Chief Counsel for Advocacy  
of the United States Small Business Administration  
on the Notice of Proposed Rulemaking**

of the United States Small Business Administration

on the Notice of Proposed Rulemaking

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## Administration

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I. *Introduction*

On October 5, 1992, the United States Congress, pursuant to Article I, § 7, cl. 2, overrode a veto and enacted the Cable Television Consumer Protection and Competition Act (Cable Act or 1992 Act) into law.<sup>1</sup> The Cable Act contemplates extensive rulemaking by the FCC in order to reduce the perceived market power of cable operators. The instant rulemaking, In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Consumer Protection and Customer Service, MM Docket No. 92-263 (December 11, 1992) (NPRM), was initiated to implement portions of the 1992 Act that modify the current system of consumer protection for cable customers.

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<sup>1</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

Prior to the enactment of the 1992 Act, customer service standards were developed by local authorities as part of the franchising process. Under the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521-59 (CCPA), local franchising authorities could consider the quality of service as part of the process for renewing a franchise. However, that provision did not reduce the crescendo of calls reaching policymakers concerning bad service by cable operators.

The cable industry recognized some problems associated with the provision of service and the National Cable Television Association (one of two national trade associations representing the cable industry) adopted "Recommended Industry Customer Service Standards." These standards are unenforceable by the industry due to the operation of the antitrust laws<sup>2</sup> and the ability of franchisors to enforce standards pursuant to the CCPA is open to question. Thus, nothing prohibited cable operators from ignoring the NCTA's standards.

The maelstrom created by the roar of the subscriber finally reached the halls of Congress. Since Congress is elected by the people (over 60 percent who subscribe to cable television) their complaints were not lightly brushed aside. Congress decided that

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<sup>2</sup> In *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978), the Court held that enforcement of a national association's canon of ethics may violate the antitrust laws.

improvements in customer service would not come without greater power given to both federal and local authorities.

## II. *The 1992 Act and the NPRM*

Section 8 of the Act specifically authorizes local franchising authorities to establish and enforce customer service requirements. The Federal Communications Commission (FCC or Commission) is mandated to develop minimum standards concerning cable system office hours, telephone availability, installations, outages, service calls, and communication between operators and the subscribers.<sup>3</sup> The Act also permits franchisors and operators to institute standards that exceed those adopted by the Commission.

In response to the 1992 Act, the FCC issued this NPRM. The Commission raises questions concerning enforcement authority and ambiguities in the Act related to the adoption of federal standards. NPRM at ¶¶ 4-7.<sup>4</sup> The Commission then proposes that

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<sup>3</sup> Section 8 also authorizes the FCC to consider the adoption of customer service standards not specifically cited in the statute. The Commission requests comments on other service standards, if any, should be promulgated. The Office of Advocacy believes that the FCC should not examine other customer service issues until it has sufficient data concerning problems not specifically mandated in § 8. The FCC may wish to launch a notice of inquiry on other customer service issues subsequent to the adoption of regulations mandated by § 8 of the Cable Act.

<sup>4</sup> The Office of Advocacy takes no position on these issues at this time.

the NCTA guidelines be the basis for FCC regulations mandated by the 1992 Act. *Id.* at ¶¶ 8-16. Finally, the Commission recognizes that any single federal standard, including the NCTA guidelines, will have a significant and adverse economic impact upon a substantial number of small cable systems. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12 (RFA), the Commission prepared an initial regulatory flexibility analysis and specifically requested comments on the alternatives designed to minimize the impact of the rules on small businesses.<sup>5</sup>

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<sup>5</sup> The Commission's initial regulatory flexibility analysis is attached to the NPRM as Appendix A. The Commission requests that comments be submitted with a separate and distinct heading designating them as a response to the initial regulatory flexibility analysis. The Office of Advocacy, the agency mandated by Congress to monitor compliance with the RFA, believes that is an unnecessary burden on commenters.

When an agency prepares an initial regulatory flexibility analysis, it is required to prepare a final regulatory flexibility analysis. One of the requirements of a final regulatory flexibility analysis is to address the comments received in response to the notice of proposed rulemaking and discuss why alternatives cited in those comments were not adopted. Nothing in the RFA or the Administrative Procedure Act authorizes the Commission to ignore valid comments on the impact on small businesses irrespective of the heading under which such comments are submitted.

Given our view of the comment process, the Office of Advocacy is combining comments on both the initial regulatory flexibility analysis and the NPRM under the NPRM's designation. This also comports with the Commission's goals, as represented by the Small Business Advisory Committee, of reducing the burdens on small businesses. If the Commission has any questions concerning our interpretation of the RFA and the procedures needed to receive comment under the RFA, please do not hesitate to contact the Office of Advocacy.

The Office of Advocacy commends the Commission for recognizing the potential impact that the rules governing customer service may have on small cable operators. The Office of Advocacy believes that the goals of the RFA and the Cable Act can be achieved through the adoption of more than one federal benchmark for customer service standards.

### III. *Customer Service Standards*

The Office of Advocacy concurs with the Commission and industry that customers deserve proper service and response to complaints. The Office of Advocacy does not dispute that the NCTA standards if implemented and enforced will lead to significant improvements in customer service. However, the Office of Advocacy remains troubled by the use of a national standard for customer service developed by the trade association representing the largest cable operators.<sup>6</sup>

Many of the standards adopted by NCTA may not be met due to staff size, financial capability, or area covered by the system. The use of such standards will impose unrealistic service expectations, significant paperwork burdens, and increased staff

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<sup>6</sup> The standards were subsequently adopted in a modified form by the Community Antenna Television Association (CATA) which has a broader membership than NCTA and includes many smaller operators. However, CATA does not believe that all of its members, much less those that cannot afford membership in CATA, can meet all of these standards.

costs. All of these elements inevitably will lead to substantial rate increases for many smaller firms or reductions in available programming. Such a result could not have been intended by Congress.<sup>7</sup>

The Office of Advocacy believes that the Commission can achieve its statutory goal without the imposition of undue costs on smaller cable operators. The Office of Advocacy believes that more than one federal service standard benchmark must be developed for cable operators.

Specifically, the Commission should tier the service standards based on the size and type of system. For example, the Commission might stratify systems into those that are addressable and those that are not. Then the Commission may wish to further subdivide the systems based on their age with one category for systems older than 10 years and one for systems less than 10 years old. Finally, the Commission may then further classify systems based on subscriber base such as: less than 1,000, 1,000-5,000, 5,000-15,000, 15,000-30,000, and more than 30,000.<sup>8</sup> This

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<sup>7</sup> While customer service complaints represented one reason for enactment of the Cable Act, the primary objective was to regulate the rapid increase in rates since the passage of the CCPA. H.R. Rep. No. 862, 102d Cong., 2d Sess. 55 (1992).

<sup>8</sup> Much of the data necessary to establish these categories will be available to the Commission as a result of a survey being conducted in conjunction with the another proceeding to implement the Cable Act. In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266, Order (Dec. 23, 1992).

type of stratification may be complex but will work to ensure that comparable type systems meet comparable customer service standards.<sup>9</sup>

Once separate tiers have been established, the FCC should not select specific customer service targets. Rather, ranges should be developed within each of the categories developed from the stratification process<sup>10</sup> so that the franchisor and cable operator could choose the best service target given local circumstances. Similarly, definitions of customer service terms should be left to negotiations between the franchisor and the cable operator. This process would allow local authorities and cable operators to reach an optimal level of service given the circumstances faced by the cable operator and local customs.<sup>11</sup> The procedures also provide sufficient latitude in the choice of standards that impasses on the appropriate level of service would be highly improbable.

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<sup>9</sup> The legislative history of the Cable Act is replete with references demonstrating Congress' recognition that one federal benchmark for customer service may be inappropriate.

<sup>10</sup> The Office of Advocacy would not be surprised to find that some of the ranges developed by the FCC may be appropriate for more than one category of system. For example, some customer service standard ranges may be appropriate for all addressable systems with more than 10,000 subscribers.

<sup>11</sup> For example, the local franchising authority for Aspen, Colorado may want to consider different criteria for alleviating an outage during the winter than the franchisor for Bisbee, Arizona where snow, to cite Spinoza, is as rare as excellent things. B. Spinoza, I Tractatus de Intellectus Emendatione 3 (1677).



#### IV. Conclusion

The Office of Advocacy and the vast majority of cable operators understand the benefits that derive from the provision of quality consumer service. While some Platonic ideal of quality service could be provided if resources were no object, neither customers nor operators could afford to provide such service. Thus, no one standard is appropriate for all cable systems and the Office of Advocacy strongly opposes adoption of a single standard applicable to all cable operators. Such a standard will unduly burden small business and raise rates to consumers. A far better approach is to tailor the standards by system type and size and specify a range of adequate service standards within each category of system. Franchisors and cable operators then can negotiate within these ranges for the optimal level of customer service. This methodology will achieve the goals of § 8 of the Cable Act without burdening small business or causing undue rate increases.

Respectfully submitted,



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